IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.4176 OF 1987

1. Mrs.Krishnabai Ramchandra Bhondwe, since deceased by her LR.)

1A. Suresh Ramchandra Bhondwe, age about 50 years, Occupation AGriculturist, residing at Hadapsar, Pune.).. Petitioner

V.

1. Premsagar Koshraj Chhadda, Age about 45 years, Occupation : Business, Residing at H.No.22, Dapodi, Pune 411 003.)

2. Madhukar Ganpat Bhondwe, Age 37 years, Occupation : Service, Residing at Rawel, Taluka Haveli, District - Pune.).. Respondents.

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None present for the petitioners.

Smt.Anita A.Agarwal for the respondent No.1.

Petition already dismissed against the respondent No.2.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 15TH SEPTEMBER, 2006

ORAL JUDGMENT:

1. None present for the petitioners. Smt.Anita A. Agarwal, the learned advocate present for the respondent No.1.

2. The petition has already been dismissed under the order dated 6th August, 1990 against the respondent No.2.

3. Few facts relevant for the decision are that the petitioners herein had filed the civil suit bearing Civil Suit No.539 of 1978 for recovery of possession on the ground that the respondent no.1 herein is the defaulter as regards the payment of rent for more than six months. The Trial Court had decreed the said suit by its decree dated 7th September, 1982. The matter was carried in appeal before the lower appellate Court by the respondent No.1 and by the impugned order and decree dated 15th June, 1985, the appeal was allowed, the judgment and decree passed by the Trial Court was set aside and the suit was dismissed.

4. While setting aside the judgment and decree of the Trial Court, the Lower Appellate Court in the impugned judgment clearly observed thus:-

> "The learned Civil Judge found in that suit that Ramchandra Bhondawe executed an agreement of sale of suit property in favour of

Charanjitlal Chhadda and Suryaprakash Sohoni for a consideration of Rs.22,000/- on 24.10.1975 and they were put in possession of the suit property on 24.10.1975. He, therefore, decreed the suit for specific performance of contract of sale and directed the present Respondents to execute the sale deed in favour of Charanjitlal Chhadda and Suryaprakash Sohoni."

5. Upon hearing the learned advocate for the respondent no.1 and on perusal of the record, it is clear that in the suit filed by the petitioners, it was a specific case pleaded by the respondents that the respondent No.1 had filed the Civil Suit No.2927 of 1977 and it was a specific case that the property was purchased by the brother of the respondent no.1 from the appellant under an agreement, and as the petitioners failed to execute the sale deed, the suit for specific performance was filed and the same was decreed. Nodoubt, it is the said decree which was sought to be challenged by way of appeal. However, nowhere in the records before this Court or even before the Lower Appellate Court, it was disclosed as to what had happened to the said appeal filed by the petitioners against the decree for specific

performance granted against them. Obviously, therefore, as the record stands, it was abundantly clear that the suit property was directed to be given in favour of the respondent No.1's brother, and therefore, the petitioners had ceased to be the owners of the suit property on the date when the suit for eviction was filed as by that time the petitioners were already entered into the agreement for conveyance of the property and even accepted the earnest money and the possession was already with the person who had agreed to purchase the same, i.e. the brother of the respondent No.1.

6. In the circumstances, therefore, no fault can be found with the impugned judgment and decree dismissing the suit for recovery of possession on the ground of alleged default in payment of rent. Once the records disclose that the petitioners ceased to be the owners in relation to the suit property, the question of accusing the respondent No.1 being in default of payment of rent does not arise. On this ground alone, there is no case made out for interference in the impugned judgment and decree.

7. In the result, therefore, the petition fails and is hereby dismissed. Rule is discharged. No

order as to costs.

(R.M.S.KHANDEPARKAR, J)